

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

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X

FRANK MORGAN, : Civil Action  
v. : No. 2:18-cv-01450  
LOGAN COUNTY COMMISSION, : Date: July 29, 2020  
et al., :  
Defendants. :  
X

**PARTIAL TRANSCRIPT** OF PROCEEDINGS HELD  
DURING JURY TRIAL - DAY 2  
BEFORE THE HONORABLE THOMAS E. JOHNSTON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Plaintiff:

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Court Reporter: Ayme Cochran, RMR, CRR  
Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1                   PARTIAL PROCEEDINGS had before The Honorable Thomas E.  
2 Johnston, Chief Judge, United States District Court,  
3 Southern District of West Virginia, in Charleston, West  
4 Virginia, on July 29, 2020, as follows:

5                   (Outside presence of jury)

6                   THE COURT: The plaintiff may return to the  
7 witness stand.

8                   MR. NESSEL: Your Honor, I have one brief issue  
9 real quick, if I may.

10                  THE COURT: Can the plaintiff go to the witness  
11 stand in the meantime?

12                  MR. NESSEL: Oh, sure. Yeah. I don't see why  
13 not. It's not going to affect what I'm about to say.

14                  THE COURT: By the way, just so you know, my court  
15 reporter's father is a retired barber. So, we had some  
16 laughs this morning about what happened in the barber shop  
17 when she was growing up.

18                  MR. NESSEL: I was wondering about that. Well,  
19 there you go.

20                  THE COURT: There you go.

21                  All right.

22                  MR. NESSEL: If I may, Your Honor, briefly.  
23 During questioning of witnesses, Ms. Greve was bringing up  
24 what I consider 404(b) evidence. No notice of intent to  
25 introduce 404 was ever filed by anybody. She's bringing up

1       criminal charges that have been dismissed, that were never  
2 pursued. She's bringing up a robbery charge; likewise,  
3 never pursued. This is character evidence and is clearly  
4 outside the scope. She cannot -- there is no reason she  
5 should bring it in.

6           Now, the charges pertaining to the events that  
7 transpired on April 20th of 2018, that should be admissible  
8 because, of course, Frank pled to three of the ten to twelve  
9 misdemeanors. However, bringing up his prior criminal  
10 history, I think, is irrelevant, highly prejudicial,  
11 confuses the jury because there's no -- if there were a like  
12 -- if there were a like charge concerning obstruction of an  
13 officer, beating an officer, that would likely be fair game.  
14 However, there's not, and what she's bringing up is just  
15 charges that have been dismissed, that have been pursued.  
16 Some of them, of course, he pled guilty to. I don't think  
17 -- I think that falls outside the parameters, exceptions, to  
18 404(b).

19           Thank you, Your Honor.

20           THE COURT: Ms. Greve?

21           MS. GREVE: Thank you, Your Honor.

22           In plaintiff's complaint, plaintiff alleges that he  
23 sustained physical injuries from contusions, lacerations,  
24 abrasions and psychological and emotional injuries,  
25 including, but not limited to, PTSD, anxiety, depression,

1       agoraphobia, insomnia, and other related and severe  
2       injuries.

3                 The witness has been involved in numerous other  
4       instances throughout his life that could be alternative  
5       explanations for PTSD, the injuries he allegedly sustained  
6       on April 20th, 2018. That could also explain the cause of  
7       anxiety and depression.

8                 It was plaintiff's counsel who elicited from this  
9       witness, as well as Marissa Hudson, the history of drug  
10      abuse and drug use and, specifically with this witness, he  
11      testified that he hadn't been using drugs and the only drugs  
12      that he used was crack cocaine. He had been off it with one  
13      exception of when he tested positive. I believe he said  
14      that was within the last year. And so, we believe that has,  
15      in fact, opened the door to his history of drug abuse.

16                 The Court has already --

17                 THE COURT: Well, you're mixing the issues here.  
18       He's not talking about drug abuse.

19                 MR. NESSEL: Not at all.

20                 THE COURT: I've already ruled on that. He's  
21       talking about other uncharged or un-convicted crimes, which  
22       I think is a different issue.

23                 MS. GREVE: Well --

24                 THE COURT: And you went into this robbery thing  
25       yesterday.

1           And, by the way, you didn't object.

2           MR. NESSEL: I know, Your Honor. I was --

3           THE COURT: And so, I think, you know, we've gone  
4 a little ways down that road, but now that he's raised the  
5 issue, I think you need to justify how you get into that.

6           MS. GREVE: So, the robbery, Your Honor, there  
7 were statements that Mr. Morgan was involved in a fight.  
8 The individual who could hear the fight going on actually  
9 thought it was a fight between he and Marissa and, when they  
10 open the door, they saw that Frank Morgan had another  
11 individual down on the ground and was beating him while  
12 holding a knife to that individual's throat.

13          We believe that it's possible that Mr. Morgan could  
14 have sustained lacerations and/or abrasions while involved  
15 in that fight that was less than 48 hours before the  
16 incident in which he alleges that every -- every part of his  
17 body was injured by the officers.

18          THE COURT: Well, a fight is one thing. You got  
19 into some business about a robbery.

20          MR. NESSEL: That's my whole point, Your Honor.  
21 There's no -- Ms. Greve is going into things where she has  
22 no evidence, no witnesses, she's not disclosed documents, or  
23 she's not disclosed any witness that can testify exactly to  
24 what she just said and it's irrelevant anyway.

25          THE COURT: Well, to the extent that she has tried

1 to demonstrate that there were circumstances on a different  
2 date that may have led to the injuries that are depicted in  
3 all of these photographs, I think that's relevant.

4 However, I do not think you get to get into matters  
5 that would be considered 404(b) material because you've  
6 given no notice of it. So, I don't -- I think you -- to the  
7 extent that you want to insinuate that he's committed other  
8 crimes that don't relate to -- that can't somehow explain  
9 those injuries, I'm not going to let you do that.

10 MS. GREVE: What about with respect to his felony  
11 convictions, for his character for truthfulness, and what  
12 about his time while he was incarcerated for evidence with  
13 respect to his anxiety, depression, PTSD and emotional  
14 distress?

15 THE COURT: Well, I think I previously ruled that  
16 with regard to his psychiatric conditions, assuming you can  
17 lay a foundation, you can cross examine him about that.

18 What was the other thing? There was something else you  
19 said.

20 MS. GREVE: So, it's the time period of  
21 incarceration. He's claiming agoraphobia.

22 THE COURT: Oh, I'm sorry.

23 MS. GREVE: Agoraphobia is one of the claims that  
24 he's made in his complaint, is an injury resulting from his  
25 -- this incident on the 20th, and I believe that that opens

1           the door and the general emotional distress claim we  
2           discussed of his time period of incarceration prior to this  
3           incident.

4           He's also claimed that he's now afraid of law  
5           enforcement and he has anxiety issues. I think that opens  
6           the door for us to discuss what contact he's had with law  
7           enforcement and what that interaction is since this arrest.

8           And I also believe that I can, without getting into  
9           whether or not he's been criminally charged with things, I  
10          can get into matters about whether or not Mr. Morgan was  
11          engaged in acts that would be consistent with his injuries  
12          and could cause emotional distress.

13           THE COURT: Well, nobody's got an expert on the  
14          psychological injuries, right?

15           MR. NESSEL: That's right, sir.

16           THE COURT: So, the only testimony we're going to  
17          get about that is through him. So, you're stuck with  
18          whatever you get out of him. And I've already ruled on  
19          that.

20           With regard to his fear of law enforcement, he did  
21          testify about that. I think it's -- I'll let you go a  
22          little ways into that for time subsequent to this incident  
23          because I think he has opened the door to that, but if we  
24          get into a full-throated examination about other criminal  
25          charges, I'm going to stop you. So, just -- there's a line

1 to be drawn there. And I'm not sure where it is, but you  
2 know now that we're going to be coming up to it.

3 And, finally, there's the question of prior  
4 convictions. I don't know what his criminal history is. I  
5 gather he has a felony conviction; is that correct?

6 MR. NESSEL: In 1999, 21 years ago.

7 THE COURT: All right. Well, let's take a look at  
8 the -- this is not a criminal case, so the rules are a  
9 little different.

10 MR. NESSEL: Yes, sir. I understand that.

11 THE COURT: How many convictions do you intend to  
12 get into as a matter of impeachment?

13 MS. GREVE: Well, Your Honor, I was actually  
14 trying to limit it for time reasons. The first issue I do  
15 certainly want to address because plaintiff's counsel -- the  
16 first question that was asked of Mr. Morgan was the night he  
17 was in jail and the response was that he had his home  
18 confinement revoked. So, the first charges I want to bring  
19 up are the actual charges while he's incarcerated.

20 He's not incarcerated because his home confinement is  
21 revoked. He's incarcerated because he has pending criminal  
22 charges. We believe those criminal charges are also  
23 admissible because they rebut some of the other testimony  
24 that has come from Mr. Morgan.

25 THE COURT: There are pending criminal charges?

1 MS. GREVE: Yes, there are.

2 THE COURT: So, what's -- he hasn't been convicted  
3 of that, so how are you going to get into that?

4 MS. GREVE: Mr. Nessel, I believe, opened the door  
5 to that when he asked Frank Morgan why he was wearing an  
6 orange jumpsuit and why he was incarcerated. Mr. Morgan's  
7 response was that he was incarcerated because his home  
8 confinement was revoked, because he had gone to cash the  
9 money that was on his card, and that home confinement had  
10 told him that he was okay for him to go cash the money that  
11 -- to cash that, but he had just went further than was --  
12 than they allowed.

13 That is not why he's incarcerated. He is incarcerated  
14 because he has pending criminal charges. He had been  
15 allowed to serve part of that on home confinement. The home  
16 confinement was revoked because he breached the terms of his  
17 home confinement.

18 THE COURT: So, he was bonded out on home  
19 confinement and it was revoked because he breached the  
20 terms. I think -- so, what's the pending charge?

21 MR. NESSEL: Your Honor, if I may, I have a little  
22 bit of insight. It's a 20-B number, 20-B-92 in Logan County  
23 Circuit Court. As this Court knows, the "B" denotes a  
24 bound-over case; ergo, he's not indicted.

25 THE COURT: Can you guys take your masks off when

1 we're talking because I don't understand you.

2 MR. NESSEL: Okay. It's a 20-B-92 or 42 case  
3 that's a bound-over case, which means Mr. Morgan has not  
4 been indicted. I'm not exactly sure exactly what the charge  
5 is pending right now. I know that -- I don't care if Ms.  
6 Greve gets into the issue of violating the terms and  
7 conditions of home confinement, as I brought it up  
8 yesterday. That's fair game. But why he's incarcerated on  
9 a bound-over case, not being indicted, and darn sure not  
10 being convicted, I think that's off limits.

11 THE COURT: Do you know what he is charged with?

12 MS. GREVE: He is charged with possession with  
13 intent to deliver fentanyl. He is charged with possession  
14 with intent to deliver methamphetamine. And he's charged  
15 with felon in possession of a firearm.

16 THE COURT: Okay. Now, tell me how it is that you  
17 get past the fact that he got revoked, which he's already  
18 testified to, and get to -- and get to cross examine him on  
19 being charged but not convicted of that.

20 MS. GREVE: Because the question that was asked of  
21 him is why he was incarcerated and it's not because home  
22 confinement was revoked. He's incarcerated because he has  
23 pending criminal charges.

24 THE COURT: You know, I rarely do this, but I am  
25 -- I will allow you to explore the revocation. The hair

1       you're splitting there, Ms. Greve, unfortunately, I'm  
2       extremely familiar with because of the criminal cases that I  
3       do.

4           The answer is both of -- both are correct. He's got  
5       pending charges, so he's incarcerated, but he's incarcerated  
6       at the moment because he violated his bond and -- however,  
7       it opens the door to a lot of potentially prejudicial  
8       material to get into what he's charged with, especially when  
9       he hasn't been convicted of it.

10          So, I am -- I am going to exclude that under Rule 403  
11       on the basis that its probative value is substantially  
12       outweighed by the risk of unfair prejudice, delay and a  
13       waste of time.

14           MS. GREVE: And can I just proffer for the record  
15       and the Court, as well, that this individual has testified  
16       that he doesn't do meth? He doesn't -- and I believe his  
17       attorney is going to start bringing up fentanyl and I think  
18       that the criminal charges for dealing methamphetamine and  
19       dealing fentanyl are relevant.

20          And this is also evidence --

21           THE COURT: Well, that's -- the criminal charges  
22       prove nothing because they are just charges, number one.  
23       And, number two, it's entirely possible to sell fentanyl and  
24       not use it. So, it is -- I will add to the list of 403  
25       reasons that I'm excluding it, the potential for confusion

1 or misleading of a jury. If you want to keep arguing, I can  
2 add some more bases for my ruling.

3 MS. GREVE: No. I just wanted to note. I just  
4 wanted to note.

5 So, that's -- this reflects a law enforcement  
6 interaction that he's had since this incident, but that is a  
7 law enforcement interaction that you're ruling I can't get  
8 into?

9 THE COURT: Well, if the whole goal of that is to  
10 get into what the charge is, no. If you want to talk about  
11 some sort of circumstance related to his arrest and not get  
12 into the charge, that's fine. I don't know where that's  
13 going. I'm not privy to the discovery, so I don't know  
14 where you're going with that. I don't know what's going to  
15 come out of that.

16 MS. GREVE: Well, if I ask this witness how much  
17 time he's been out of jail from May of 2018 until now and  
18 how much -- and in that period how much interaction he's had  
19 with law enforcement, if he doesn't respond truthfully, can  
20 I not bring up the arrests and not -- I don't have to say  
21 that he was arrested. I don't have to say that there was a  
22 criminal charge. But I do have a criminal complaint sworn  
23 by a law enforcement officer and can I not bring that up?

24 THE COURT: Mr. Nessel?

25 MR. NESSEL: Your Honor, there's a tremendous

1 difference between interactions with police officers and  
2 correctional officers. If anybody in this room knows more  
3 than anybody, it's probably me and Mr. Murray. We've had  
4 several cases together.

5 And correctional officers, it's a confined society  
6 inside with cameras, so on and so forth.

7 THE COURT: Well, hold on. You're not talking  
8 about correctional officers?

9 MS. GREVE: No, Your Honor.

10 MR. NESSEL: Well, he just -- his interactions  
11 with them on the one time without bringing up the charges.  
12 I mean, if his claim is that he's frightened of police  
13 officers, rightfully so, I suppose.

14 But my point is, is that if Ms. Greve is going into  
15 have you been confronted by police officers since April 20th  
16 of '18, I think she can do that, but not going into any  
17 charges.

18 THE COURT: Well, I think that's what I just said.

19 MR. NESSEL: You did.

20 THE COURT: Yeah. I don't know where this is  
21 going exactly, but --

22 MR. NESSEL: I don't either.

23 THE COURT: I'll be prepared to put the brakes on  
24 it if I think it's going somewhere it shouldn't.

25 MS. GREVE: So, now the other is that plaintiff's

1       counsel elicited from Mr. Morgan that he pled guilty to  
2       battery on a law enforcement officer because it was a  
3       trade-off of -- I think it was represented that there were  
4       15 other charges.

5                    MR. NESSEL: Ten other.

6                    MS. GREVE: The plea actually dealt with a  
7       dismissal of claims from two cases. I would like to  
8       introduce all of the charges that were dismissed in exchange  
9       for the plea. The majority -- all of the charges except one  
10      came from this incident. The other charge was a 2019  
11      incident, but it's part of the plea which has been made part  
12      of the record and the door has been opened to that, Your  
13      Honor.

14                  MR. NESSEL: They're dismissed. Dismissed  
15      charges. The disposition of those charges is complete  
16      dismissal. Therefore, ergo, he was found not guilty of  
17      them, Your Honor.

18                  I do a lot of criminal law. This Court is far more  
19      advanced than I am in it.

20                  THE COURT: Well, I think she's right on this one.

21                  MR. NESSEL: Okay.

22                  THE COURT: I think you opened the door to that  
23      pretty wide, actually. So, I will let her explore that.

24                  MR. NESSEL: Yes, sir.

25                  THE COURT: And that's -- you know, yeah, I'll let

1                   her explore that.

2                   MR. NESSEL: Okay. Thank you, sir.

3                   THE COURT: Anything else?

4                   MS. GREVE: Well, when we're talking about his  
5                   felony convictions, this is a civil matter, and if I ask  
6                   this witness how many felony convictions he's had and he  
7                   doesn't remember, how far am I allowed to go in refreshing  
8                   his recollection?

9                   THE COURT: Well, you can refresh recollection  
10                  appropriately the same way any other witness would have  
11                  their recollection refreshed about any other document.

12                  MS. GREVE: So, is it going to be permissible for  
13                  me because I am on cross examination to actually cross  
14                  examine him and if he doesn't remember that he was an  
15                  escaped felon in Ohio that I can refresh his recollection  
16                  with that?

17                  THE COURT: You -- you can.

18                  MS. GREVE: Do I --

19                  THE COURT: If you do it appropriately, yes.

20                  There's a right way to do that and a wrong way to do that.

21                  MS. GREVE: Well, this is cross exam, but I don't  
22                  -- given the Court's rulings, I don't want to state the  
23                  conviction in my question if that -- if you're ruling that  
24                  would be improper.

25                  THE COURT: That's exactly what I'm ruling.

1 MS. GREVE: Okay.

2 THE COURT: You show him the document. You say,  
3 "Does this refresh your recollection?" If it does, it does.  
4 If it doesn't, it doesn't. And then, if it does, then you  
5 can ask him, okay, what is that and you -- but until then,  
6 until his recollection is refreshed, I don't think you get  
7 to get into it.

8 MS. GREVE: Okay.

9 THE COURT: Now, one thing I want to ask, and I  
10 haven't -- it's been awhile since I've encountered this.  
11 Let me take a look at this real quick.

12 MS. GREVE: Sorry. There was one other matter  
13 that I did want to get into and I want to make sure that  
14 there is a --

15 THE COURT: Go ahead. I'm trying to find the  
16 Rules of Evidence in this book. Go ahead.

17 MS. GREVE: After this complaint was filed or  
18 around the time -- actually, around the time that this  
19 complaint was filed there were -- a month before this  
20 complaint was filed, there were domestic battery and assault  
21 charges brought by Marissa Hudson against Frank Morgan.  
22 The -- I would like to ask Mr. Morgan about the facts that  
23 were underlying that assault and I do believe that that's  
24 relevant.

25 I think the assault of his key witness here is an issue

1       that the jury can decide, if that was a credible occurrence  
2       or not. Now, of course, he can deny it happened, but I  
3       would like to be able to present him with the facts.

4                    MR. NESSEL: That's clearly not admissible under  
5                    404 (b). That case was dismissed.

6                    Again, I allowed Ms. Hudson to address it yesterday. I  
7        was kind of -- how do I say it? I was kind of patient,  
8        which is out of character for me, if you know me. I think  
9        that it -- considering it was dismissed and there's no  
10      conviction of it and it's irrelevant to any assault on a  
11      police officer or his claims in this case, I think it's  
12      inadmissible, Your Honor, and overly prejudicial, as well.

13                  THE COURT: Refresh my recollection about what Ms.  
14      Hudson's testimony was on that.

15                  MS. GREVE: Ms. Hudson said that she would have  
16      never sworn out a complaint against Frank Morgan, that she  
17      didn't remember him assaulting her. Then, when I reminded  
18      her that she was at the hospital, she said, yeah. Well,  
19      yeah. Maybe.

20                  THE COURT: Let me take a look at a couple things  
21      here.

22                  MS. GREVE: And the door is -- this was not  
23      objected to at all by Mr. Nessel, whether it's  
24      characteristic of him or not.

25                  MR. NESSEL: With one witness, as opposed to the

1 other. That's the distinction with that.

2 MS. GREVE: I think the argument that it's  
3 prejudicial is gone since it's already out there in front of  
4 the jury. So, with respect to relevancy, I think whether or  
5 not the plaintiff criminally assaulted and battered their  
6 key witness, who the jury already knows had been financing  
7 him with her prostitution money, I think that really  
8 addresses credibility.

9 THE COURT: Well, let me address that first. I  
10 think that the relationship between -- between Ms. Hudson  
11 and Mr. Morgan is sort of central to the testimony in this  
12 case. Her testimony on it was equivocal at best and I think  
13 I'm going to allow you to cross examine Mr. Morgan about it.  
14 And I believe that it is not in this case a collateral  
15 matter and, therefore, extrinsic evidence of it is  
16 allowable. So, I will allow that.

17 Now, with regard to criminal convictions, have you  
18 complied with Rule 609(b) with regard to his past  
19 convictions?

20 MS. GREVE: I don't know what 609(b) requires me  
21 to do, Your Honor.

22 THE COURT: Well, I will read it to you. Mr.  
23 Nessel indicated that Mr. Morgan's felony conviction was  
24 from 1999. Do you know when he got -- what was the  
25 conviction for?

1                   MR. NESSEL: One moment, Your Honor. I have his  
2 --

3                   MS. GREVE: His drug dealing. That was the Gary,  
4 Indiana charge.

5                   MR. NESSEL: It was actually with intent, sir.

6                   THE COURT: And how long was he incarcerated?

7                   MR. NESSEL: I'm not sure.

8                   THE COURT: Mr. Morgan?

9                   MR. MORGAN: Six years.

10                  THE COURT: Six years? All right. So, when did  
11 you get out?

12                  MR. MORGAN: Out in '97.

13                  THE COURT: You got out in '97?

14                  MR. MORGAN: Yes.

15                  THE COURT: I thought you said that -- Mr. Nessel  
16 said the conviction was in '99.

17                  MR. MORGAN: In '99? The one in Ohio or Indiana?  
18 I got out of prison in '97. '92 to '97.

19                  MR. NESSEL: So, '92 was the conviction; '97 would  
20 be when you were released?

21                  MR. MORGAN: Yes.

22                  MR. NESSEL: That's right. You were like 20 years  
23 old or 18.

24                  There you go, Your Honor. That clears everything up.

25                  THE COURT: All right. So, Rule 609(b) says that

1       this subdivision (b) applies if more than ten years have  
2       passed since the witness's conviction or release from  
3       confinement for it, whichever is later.

4              Evidence of the conviction is admissible only if, one,  
5       its probative value supported by specific facts and  
6       circumstances substantially outweighs its prejudicial  
7       effect; and, two, the proponent, that would be you, Ms.  
8       Greve, gives an adverse party reasonable written notice of  
9       the intent to use it so that the party has a fair  
10      opportunity to contest its use.

11             Have you given Rule 609(b) notice?

12             MS. GREVE: Not with -- not with felonies more  
13       than ten years old, the more recent ones, Your Honor.

14             THE COURT: All right. Well, then anything more  
15       than ten, years old is out. You cannot even cross examine  
16       him about it because you didn't give notice.

17             MS. GREVE: Okay.

18             THE COURT: So, what crimes are you specifically  
19       intending to cross examine him about?

20             MS. GREVE: The -- and I'm referring to an NCIC  
21       report. I'm not claiming to have personal knowledge of his  
22       convictions. The report reflects an escaped felon  
23       conviction, March 2007; felony burglary convicted -- and  
24       these are in Ohio -- March, 2007. Oh, that's more than ten  
25       years old. Sorry.

1                   THE COURT: I was just thinking that. Well, it  
2 depends on when he got out of custody.

3                   MS. GREVE: Well, I don't know. I don't know.

4                   MR. NESSEL: If he was at all in custody. May I?  
5 I'm reading 609 with you, Your Honor.

6                   Your Honor, in all actuality, I mean, we live in 2020.  
7 There's internet everywhere. All Ms. Greve had to do was,  
8 pursuant to Rule 9, advise me of it, do research, go to the  
9 DOC in whatever state, whatever commonwealth, and determine  
10 how long he was in. That's her burden. She didn't do it.

11                  MS. GREVE: Your Honor, there's no -- I mean --

12                  MR. NESSEL: That's where we are.

13                  MS. GREVE: Mr. Nessel had a PI run a list of  
14 prior convictions. They don't match everything in the NCIC.  
15 But, in any event, if it's older than ten, I'm not fighting  
16 about that. I'm not fighting about that.

17                  THE COURT: Well, then --

18                  MS. GREVE: I don't know when he got out on the  
19 2007 charges in Ohio.

20                  THE COURT: Then it's out.

21                  MS. GREVE: I'm sorry?

22                  THE COURT: Then it's out. I mean, this is  
23 something that should have been -- this is one of those  
24 instances that I tell you about at the pretrial conference.  
25 You all should have raised this issue and dealt with it long

1 before we were in trial. We've had a jury sitting back  
2 there a half an hour now and we're dealing with an issue  
3 that we could have dealt with before trial, Ms. Greve.

4 So, have you got anything else you want to cross  
5 examine him about that's not ten years old that's a felony?

6 MS. GREVE: Or a crime of dishonesty?

7 THE COURT: Or a crime of dishonesty.

8 MS. GREVE: I do not think so. Well, petit  
9 larceny, is that a crime of dishonesty? I think so. Right?

10 THE COURT: Petit larceny.

11 MR. NESSEL: Your Honor, technically any crime is  
12 a crime of dishonesty.

13 THE COURT: Well, as you well know, Mr. Nessel,  
14 there is a body of case law that sorts through what is a  
15 crime of dishonesty under 609 and what's not. It would have  
16 been lovely to have some notice of this issue before now so  
17 we weren't thrashing around with it. So, what's your  
18 position on it?

19 MR. NESSEL: It's out. That doesn't fall into the  
20 parameters. I was inflicting some sarcasm there about  
21 crimes of dishonesty.

22 THE COURT: If you haven't figured it out, I'm not  
23 in the mood for sarcasm.

24 MR. NESSEL: Yeah. I do understand that. Your  
25 Honor, just to defend myself, you know --

1                   THE COURT: I'm not -- I'm not saying -- my  
2 complaint here is that Ms. Greve didn't do her homework,  
3 didn't make notices, didn't raise these issues when she  
4 should have.

5                   MR. NESSEL: Yes, sir.

6                   THE COURT: Not complaining about you. What I'm  
7 at this point irritated with is the fact we've got a jury  
8 sitting back there waiting and we're still dealing with  
9 issues we could have dealt before trial.

10                  So, if your position is that's not a crime of  
11 dishonesty, I don't know if it's a crime of dishonesty or  
12 not. If I had an opportunity to look into it, I might find  
13 that it is. Under the circumstances, on a close call, Ms.  
14 Greve is going to lose.

15                  Nope. You're not -- you're not going to cross examine  
16 him on that.

17                  Anything else we need to deal with before we bring the  
18 jury in?

19                  MR. NESSEL: No, sir.

20                  THE COURT: All right. Just to let you know, I  
21 had a scheduling conflict this evening that got cleared up,  
22 so we will be doing a charge conference at the close of the  
23 evidence today. Whether we finish early, we'll do it then.  
24 If we're not finished with evidence by 5:00, we'll do it  
25 shortly after 5:00.

1 (End of excerpt. Further proceedings followed)

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## CERTIFICATION:

5 I, Ayme A. Cochran, Official Court Reporter, certify  
6 that the foregoing is a correct transcript from the record  
7 of proceedings in the matter of Frank Morgan,  
8 Plaintiff/Counterclaim Defendant v. Logan County Commission,  
9 et al., Defendants/Counterclaim Plaintiffs, Civil Action No.  
10 2:18-cv-01450, as reported on July 29, 2020.

11

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s/Ayme A. Cochran, RMR, CRR

January 5, 2022

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